

Circuit Court for Baltimore City
Case No. 24-C-17-000110

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 645

September Term, 2019

JONATHAN FOGG

v.

MUSTAFA ERAIBI, ET AL.

Leahy,
Friedman,
Beachley,

JJ.

Opinion by Friedman, J.

Filed: June 22, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. MD. RULE 1-104.

Jonathan Fogg alleges negligence on the part of Corrisoft, LLC for Mustafa Eraibi's actions while he was under electronic monitoring. Because there is no general tort duty owed, and there was no special relationship between Corrisoft and Eraibi, Corrisoft did not owe a duty of care to Fogg. The motion to dismiss was, therefore, properly granted and we affirm.

BACKGROUND

Corrisoft contracted with the Maryland Department of Juvenile Services to provide electronic monitoring services for juveniles placed on home detention. Corrisoft provided the Department of Juvenile Services with GPS ankle bracelets, designed to detect whenever an individual was outside home detention and notify Corrisoft. Corrisoft, in turn, would inform the Department of Juvenile Services.

Eraibi was a juvenile on home detention under the supervision of Corrisoft's electronic monitoring when he violated home detention, traveled to Baltimore City, and assaulted and robbed Fogg.¹ Fogg filed a civil lawsuit against Corrisoft, claiming negligence for its failure to properly monitor Eraibi while on home detention. Corrisoft filed a Motion to Dismiss, which Fogg opposed, arguing that it did not owe a duty of care to Fogg. The Circuit Court for Baltimore City found the following:

... [Fogg] has not convinced this Court that the contract between [Corrisoft] and the Maryland Department of Juvenile Services created a duty on the part of [Corrisoft] to the general public ... [and]

¹ Mustafa Eraibi pled guilty to first-degree attempted murder and car theft. For that crime, he is currently serving a sentence of thirty years' incarceration with eighteen years suspended.

... [Fogg] has not convinced this Court that [Corrisoft] “took charge” or had “control” of ... Eraibi, that a special relationship existed between [Corrisoft] and [Eraibi] which imposed a duty on [Corrisoft] to control ... Eraibi’s conduct, or that a special relationship between [Corrisoft] and [Fogg] which gave [Fogg] a right to protection.

As a result, the circuit court granted Corrisoft’s motion to dismiss. Fogg appealed to this Court.

ANALYSIS

Boiled down to its essence, Fogg’s argument is that Corrisoft owed him a duty of care arising out of the existence of a “special relationship” between Corrisoft and Eraibi.² If there is a “special relationship,” that relationship imposes a duty on one party to protect another. *Remsburg v. Montgomery*, 376 Md. 568, 589-90 (2003).

A leading case in Maryland analyzing the existence of such a special relationship is *Lamb v. Hopkins*, in which the Court of Appeals was asked “whether a probation officer who fails to report a probationer’s violation ... owes any duty to an individual injured by the negligence of the probationer.” 303 Md. 236, 238 (1985). The *Lamb* Court closely examined §§ 315 and 319 of the *Restatement (Second) of Torts*, both of which reflect the

² Fogg also argues that Corrisoft owed him a duty directly under what he considers “traditional principles of negligence.” While Fogg is right that the Court of Appeals has permitted direct liability to a third party in the absence of a “special relationship,” it has done so only in the context of a social host relationship. *Kiriakos v. Phillips*, 448 Md. 440 (2016). Moreover, in so, doing, the Court instructed us not to broaden that potential duty beyond the social host situation. *Kiriakos*, 448 Md. at 476, 486. In the absence of a social host relationship, (and, as we discuss above, in the absence of a “special relationship”), Fogg is in the same relationship to Corrisoft as everybody else in the world. And our tort law will not recognize a duty to the world. *Valentine v. On Target, Inc.*, 353 Md. 544, 553 (1999) (“One cannot be expected to owe a duty to the world at large to protect it against the actions of third parties.”).

common law. § 315 states that “absent a special relation between the actor and the third person, the actor has no duty to control the conduct of a third person and therefore no liability attaches for the failure to control that person.” *Id.* at 242. One type of special relationship which can give rise to such a duty can be found in § 319, which provides:

One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm.

Id. at 243. The Court of Appeals adopted § 319 as “the law of this State governing the duty of those in charge of persons having dangerous propensities.” *Id.* at 245. In applying the principles set forth in § 319, the Court found that probation officers were “under no duty to control the probationer because they had not taken charge of him,” and absent the custodial relationship, § 319 did not impose a duty to control the probationer’s actions. *Id.* at 248-49, 253. Similarly, in *Dixon v. State*, this Court relied on *Lamb* in holding that absent a “custodial relationship,” the Division of Parole and Probation did not owe a duty to control a probationer’s action. 205 Md. App. 505, 517-18 (2012). Both *Lamb* and *Dixon* held that no custodial relationship exists “between the State and individuals who are granted a conditional release from prison.” *Dixon*, 205 Md. App. at 518 (citing *Lamb*, 303 Md. at 248-49). In the absence of a custodial relationship, there is no special relationship.³

³ While a special relationship may also arise under statutory law, or by a contractual or other private relationship, these types of relationships are not alleged here. *See Remsburg v. Montgomery*, 376 Md. 568, 584 (2003); *Bobo v. State*, 346 Md. 706, 715 (1997).

There are, however, “degrees of being ‘in charge’ and having ‘control.’” *Lamb*, 303 Md. at 244.

The key, therefore, is whether Corrisoft took charge of Eraibi or placed him in custody sufficient to form a “special relationship.” If Corrisoft did not have a duty to control Eraibi’s actions, then it could not owe Fogg a duty to protect him from harm. *See id.* at 253.

We hold that Corrisoft had even less custody and control of Eraibi than the Division of Parole and Probation had over the probationers in *Lamb* and *Dixon*. If it wasn’t enough in *Lamb* and *Dixon*, it cannot be enough here. Eraibi’s status was that he had been placed under “community detention,” which includes electronic monitoring. MD. CODE, COURTS & JUDICIAL PROCEEDINGS (“CJ”) § 3-8A-01(h)(2). “Community Detention” is defined as “a program monitored by the Department of Juvenile Services in which a delinquent child ... is placed in the home of a parent, guardian, custodian, or other fit person ... as a condition of probation or as an alternative to detention.” CJ § 3-8A-01(h)(1). “Detention,” on the other hand, means “the temporary care of children who, pending court disposition, *require secure custody* for the protection of themselves or the community, in physically restricting facilities.” CJ § 3-8A-01(n) (emphasis added). Eraibi was not in custody, Corrisoft did not take charge of him and, as a result, there was no special relationship. Absent a special relationship, there is no valid cause of action in negligence. *See Pendleton v. State*, 398 Md. 447, 460 (2007) (“[T]here can be no negligence where there is no duty that is due.”). The circuit court, therefore, properly dismissed the claim.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**